

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

MICHAEL CULBERSON (#0028416),

Petitioner,
v.

CIVIL ACTION NO. 2:20cv510

HAROLD CLARKE,
Director, Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of Petitioner's constitutional rights pertaining to his 2020 conviction and sentencing in the Norfolk Circuit Court for grand larceny. As a result of the conviction, Petitioner was sentenced to serve a prison term of four years. In addition to the petition, Mr. Culberson also filed three motions for release on bail pending appeal. (ECF Nos. 6, 13 and 15).

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed March 3, 2021 recommends dismissal of the petition without prejudice for failing to exhaust state court remedies. In addition, the Report and Recommendation recommends that Mr. Culberson's three interim motions for release be terminated as moot based on the relief that Mr. Culberson obtained in state court, or to the extent they are not moot, then they should be denied and dismissed without prejudice.

The Report and Recommendation advised each party of the right to object and the time limit for doing so. The Court has received no objections, and the time for filing objections has now expired.¹

Accordingly, the Court accepts the findings and recommendations set forth in the Report and Recommendation filed March 3, 2021. It is ORDERED that Respondent's Motion to Dismiss (ECF No. 21) is GRANTED, and that Mr. Culberson's petition is DENIED and DISMISSED without prejudice. It is further ORDERED that Mr. Culberson's three interim motions for release on bail pending appeal (ECF Nos. 6, 13 and 15) are DENIED and DISMISSED without prejudice.

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

¹ Petitioner's copy of the Report and Recommendation was returned to the court as undeliverable. Petitioner has not provided the court with notice of his relocation, release or current address. A review of online inmate records also provides no information on the petitioner.

The Clerk is directed to mail a copy of this Final Order to Petitioner Michael Culberson at the last known address on file with the Court. The Clerk shall also please provide an electronic copy of the Final Order to counsel of record for Respondent.

/s/

Arenda L. Wright Allen
United States District Judge

April 16, 2021
Norfolk, Virginia